IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 10.10.2007

CORAM

THE HONOURABLE MR.JUSTICE S.J.MUKHOPADHAYA
AND
THE HONOURABLE MR.JUSTICE R.SUDHAKAR

Writ Petition No.49011 of 2006
and
Miscellaneous Petition No.1 of 2006

Indian Bank, represented by its
Chief Manager,
Chrompet,
Chennai-600 044. ... Petitioner

-Vs.-

1.P.Vijayakumari,
Prop., Sakthi Industries,
No.134, Nemilicherry village,
Chrompet,
Chennai-60 0044.

2.V.Padmanabhan.

3.The Registrar,
Debt Recovery Appellate Tribunal,
Madras-6. ... Respondents

Writ Petition is filed under Article 226 of Constitution of India praying to issue a writ of certiorari to call for records on the file of the third respondent dated 30.11.2006 passed in M.A.No.203 of 2006 and quash the same as illegal, incompetent, irregular and without jurisdiction.

For appellant : Mr.V.Raghavachari

For respondents 1 and 2 : Mr.Prasanth

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JUDGMENT

R.SUDHAKAR,J.

The bank has filed this writ petition to set aside the order of the Debt Recovery Appellate Tribunal extending the time given to the respondents 1 and 2 to pay the bank as per the award of the Lok Adalat dated 30.11.2006 in M.A.No.203 of 2006.

2. The facts of the case for disposal of the writ petition is as follows:- The first respondent, who is the proprietrix of Sakthi Industries availed loans from the petitioner bank for four different purposes, viz., (1) Open Cash Credit; (2) Supply Bills Purchase; (3) Medium Term Loan (building) and (4) Medium Term Loan (machinery) with interest at 20.25%. There was an hypothecation agreement in respect of movables, plant and machinery and the first respondent also deposited the documents of title deeds of properties by way of equitable mortgage. The loan amount, according to the bank, was not properly settled and therefore, notice was issued for recovery of the same and on the failure on the part of the first respondent to settle the claim, Original Application No.450 of 2000 was filed by the bank against the first respondent Proprietrix of the company and V.Padmanabhan, the guarantor, the second respondent for recovery of a sum of Rs.62,96,582.68 with interest at 19.8% per annum with quarterly rests from the date of application till date of realisation. The other reliefs sought for are as follows:-

> "(b) directing the Recovery Officer to sell the property more particularly described in the schedule "A" & "B" hereunder and apply the sale proceeds to the certificate amount, after defraying the expenses for sale.
>
> (c) in the event of deficiency, directing the respondents 1 and 2 to pay the balance amount after appropriation of sale proceeds with further interest at 19.89% per annum compounded quarterly upto the date of payment by passing a personal decree.
>
> (d) directing the respondents to pay cost of this application and granting a recovery certificate in favour of the applicant for the above reliefs and further reliefs as this Hon'ble Tribunal may deem fit and proper and render justice."

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From the pleadings, it appears that the matter was taken up by the Debt Recovery Tribunal in March, 2002 for trial. Respondents 1 and 2 filed proof affidavit and before documents were marked, at the request of the parties the case was referred to the Lok Adalat to be held on 10.9.2004. Before the Lok Adalat, it appears, the respondents 1 and 2 submitted that they are also willing to settle the outstanding in respect of another company, M/s.Sivan Precision Works, run by the second respondent for which loan was availed and extended by the petitioner bank. A proposal for settlement of claim, on behalf of both the respondents were made and a sum of Rs.34.5 lakhs was arrived at as one time settlement.

3. The petitioner bank and the respondents 1 and 2 settled their claim, before the Lok Adalat on 10.9.2004 and an Award was passed by the Lok Adalat as follows:-

> "The claim amount for O.A.No.450/2000 is Rs.62.97 Lakhs. The claim amount for Sivan Precision Works is Rs.7.80 Lakhs.
>
> The total claim for Sivan Precision Works is 7.80 Lakhs. The parties have settled the both the matters on the following terms and conditions:
>
> (1) The defendant agrees to settle in both the matter for a sum of Rs.34.5 lakhs.
>
> (2) The defendant agrees to pay the said amount on or before 10.12.2004 with PLR interest. If the defendant pays the entire amount on or before 11.10.2004, the said amount shall not carry any interest.
>
> If the defendant fails to pay the entire amount as per the above compromise, the bank is at liberty to claim the entire claim amount as per OA 450/2000 without reference to this compromise."

On the same day, i.e., on 10.9.2004, the Debt Recovery Tribunal, Chennai, Presided by Member, passed an order in Original Application No.450 of 2000 as follows:-

> "1. The case is taken up today on the basis of the Joint Memo of Compromise presented at by both parties before DRT-1 Lok Adalat (15th Lok

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Adalat) held on 10th September, 2004. The Lok Adalat panel has reported settlement and has passed the Award as per the terms and conditions contained in the Memo of compromise recorded before the Lok Adalat. As per Award, both the parties have arrived at for settlement of this case.

2. The above stated memo of settlement is duly approved and recommended by the panel of Lok Adalat consisting of Presiding Judge Shri A.S.Khan (Retd. Judicial Member, CAT, Chennai) and Members Shri T.Veeraraghavan, (Retd. DGM) and Smt.Sudharashana Sundar, Advocate, under their Signatures. The orders passed/observation made by the Lok Adalat (the Panelists) is reproduced here below:

"When the matter was taken up for hearing the party represented by Thiru K.Balasubramani, Advocate and the Bank is represented by Thiru L.Mohan, Advocate and Thiru R.N.Giriloganathan, Chief Manager, Indian Bank, Chromepet Branch, Chennai. When the matter was taken up, the parties wanted to settle another connected matter M/s.Sivan Precision Works. The claim amount for OA No.450/2000 is Rs.62.97 Lakhs. The claim amount for M/s.Sivan Precision Works is Rs.7.80 Lakhs.

The total claim for Sivan Precision Works is Rs.7.80 Lakhs. The parties have settled both the matters on the following terms and conditions:-

1) The Defendant agrees to settle both the matters for a sum of Rs.34.5 Lakhs.

2) The Defendant agrees to pay the said amount on or before 10.12.2004 with PLR interest. If the defendant pays the entire amount on or before 11.10.2004, the said amount shall not carry any interest.

If the defendant fails to pay the entire amount as per the above the compromise, the Bank is at liberty to claim the entire claim amount as per O.A.No.450/2000 without reference to this compromise.

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Court fee is ordered to be refunded u/s 21(1) of Legal Service Authorities Act.

3. The Memo of Compromise and Award passed by the Lok Adalat appears to be legally in order and therefore, is accepted and taken on record. Consequently, the O.A. stands finally disposed as settled in Lok Adalat as per the Award and strictly in terms and conditions contained in the Memo of Compromise.

(emphasis supplied)

4. Final order is passed in terms of Award passed by the Lok Adalat as per the terms and conditions contained in the Memo of Compromise. A copy of Adalat's award shall form part of this order as well as the Recovery Certificate if issued.

5. Recovery Certificate may be issued in case of default or if deemed necessary. The Recovery Certificate be prepared and issued strictly as per the terms of compromise and Award passed by the Lok Adalat.

6. Inform all the parties concerned. Ordered accordingly."

4. At the request of the respondents 1 and 2 by letter dated 8.12.2004, the petitioner bank extended the time for payment of the amount in terms of the award of the Lok Adalat till 21.1.2005. Respondents 1 and 2, however, did not pay the amount by 21.1.2005. It is thereafter stated that the respondents 1 and 2 sought for extension of time and they made part payment of Rs.3 lakhs on 8.2.2005.

5. From February, 2005, the matter was in a stalemate and from the affidavit of second respondent, particularly in M.A.Nos.295 and 296 of 2005 filed in O.A.No.450 of 2000, it appears that in September, 2005, the bank had moved for early hearing of the matter. Thereafter, on 18.10.2005, a Recovery Certificate was issued in O.A.No.450 of 2000 as follows:-

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"O.A.No.450 of 2000
RECOVERY CERTIFICATE

In the matter of
M/s. Indian Bank
10, Bashyam Street,
Radha Nagar,
Chromepet,
Chennai 600 044. .... Applicant Bank

-versus-

1.Mrs.P.Vijayakumari,
Prop. Sakthi Industries,
No.134, Nemilicherry village,
Chromepet,
Chennai 600 044.

2.Mr.V.Padmanaban,
No.07, Krishnaswamy Street,
Ganapathypuram,
Chromepet,
Chennai 600 004. ...
Defendants

Whereas the above titled application having come up on 10.09.2004 for final disposal under provisions of S.19 of the Recovery of Debts due to Banks & Financial Institutions Act 1993 thereinafter referred to as the Act for the determination of debt against the respondents through lok adalat.

Whereas the above defendants failed to honour the Lok Adalat verdict, it is hereby ordered and certified under Provisions of the Section 19 sub clauses 4 & 7 of the Act for recovery of Rs.62,96,582.68 with interest at 19.89% from the defendant from the date of application to the date of realisation, thereon with costs.

It is further ordered that the defendant do pay the sum of Rs.1,37,24,962.68 comprising of Rs.62,96,582.68 as principal and Rs.73,13,647.00 as interest and Rs.1,14,733.00 as costs from the above named defendant as per the schedule of costs within

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the time extended if any.

It is further certified that in default of such payment as aforesaid the amount due shall be recoverable by sale of hypothecated movable or mortgaged immovable property as schedule hereunder to the defendants.

It is further certified and ordered that if the money realised by such sale not be sufficient for payment in full of the amount payable to the Applicant Bank as aforesaid, the applicant Bank shall be at liberty to proceed against the defendant or defendants personally for the amount to the balance."

6. On 19.10.2005, a notice was issued by the Recovery Officer in terms of the Recovery Certificate for recovery of a sum of Rs.1,37,24,962.68 as per the Recovery Certificate. Thereafter on 25.10.2005, the respondents 1 and 2 filed M.A.Nos.295 to 297 of 2005 in O.A.No.450 of 2000.

(i) M.A.No.295 of 2005 has been filed for condonation of delay of 320 days in filing the petition for extension of time in payment of the agreed amount covered under Lok Adalat order dated 10.9.2004 passed in O.A.No.450 of 2000.

(ii) M.A.No.296 of 2005 has been filed praying to extend the time to comply with the order of Lok Adalat dated 10.9.2004 passed in O.A.No.450 of 2000.

(iii) M.A.No.297 of 2005 has been filed praying to stay the Recovery Proceedings under DRC No.92/2005-RO-II in O.A.No.450 of 2000.

On 14.11.2005, an order of attachment was passed by the Recovery Officer in respect of the lands which were the subject matter of equitable mortgage by deposit of title deeds. On 16.11.2005, respondents 1 and 2 filed M.A.No.311 of 2005 praying to recall the Recovery Certificate DRC No.92/2005 RO-II and withdraw the same. On 18.11.2005 respondent 1 and 2 filed a memo for advancing the date of hearing before the Debt Recovery Tribunal from 21.11.2005 to 18.11.2005, such memo was rejected and the matter was posted for hearing on 21.11.2005.

7. Aggrieved by the order rejecting the memo for advancing the hearing, appeal M.A.No.191 of 2005 was filed before the Debt Recovery Appellate Tribunal and interim orders were passed directing the present respondents 1 and 2 to deposit the entire

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amount as determined by the Lok Adalat, less Rs.3 lakhs already deposited. A sum of Rs.31.5 lakhs was deposited on on 19.12.2005 recorded by memo dated 21.12.2005. Further on 3.8.2006, the Debt Recovery Appellate Tribunal passed the following order in M.A.No.191 of 2005:-

> "3. During the pendency of the appeal, the appellants have represented that the matter was settled in Lok Adalat held on 10.9.2004 for Rs.34.5 lakhs and they could not pay the amount in time, as agreed. But, however, they represented that they deposited Rs.3 lakhs on 8.2.2005. When the matter was taken up on 13.12.2005, interim stay was granted on condition that the appellants should deposit the entire amount agreed before the Lok Adalat i.e., Rs.34.5 lakhs together with interest at PLR rate from 10.9.2004 till that date less Rs.3 lakhs, and the appellants have filed a memo on 21.12.2005 stating that they have deposited the said amount. Both the parties were directed to settle the matter. But, now, it turns out that the matter is not settled. The appellants were directed to deposit the amount with the respondent bank, with a hope that the matter could be settled. But, now, the respondent bank states that the matter cannot be settled for the said amount, and therefore, the settlement could not be arrived at.
>
> 4. In the above said circumstances, the respondent bank is hereby directed to return the amount deposited by the appellants on 19.12.2005.
>
> 5. Interim stay granted, shall continue for two weeks from today. The appellants are at liberty to move the DRI-I, Chennai for settlement."

8. On 9.10.2006 auction sale notice was issued by the Recovery Officer, DRT-I, Chennai. On 11.10.2006, M.A.No.295 of 2005 filed for condonation of delay was dismissed by DRT-I, Chennai. The main reason for rejecting the M.A.No.295 of 2005 is on the ground of delay, laches and lack of bona fides holding that respondents 1 and 2 did not pay the agreed amount in time and there is no valid reason for condonation of delay.

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9. Aggrieved by the order of the Debts Recovery Tribunal, Chennai, dismissing the M.A.No.295 of 2005 in O.A.No.450 of 2000 for condonation of delay, the appeal M.A.No.203 of 2006 was filed on 16.10.2006 before the Debts Recovery Appellate Tribunal. Interim stay was granted on 17.10.2006, on condition, respondents 1 and 2 herein depositing a sum of Rs.38 lakhs. On 29.10.2006, a sum of Rs.3 lakhs was deposited by the respondents 1 and 2 herein to the petitioner bank. The appeal was disposed off holding that the Debt Recovery Tribunal should have considered the application seeking extension of time instead of dismissing the Miscellaneous Application No.295 of 2005 filed for condonation of delay. The Appellate Tribunal also observed that the other applications were kept pending and the condone delay application alone was taken up and was dismissed. To meet the ends of justice, holding that Tribunal had the power to extend time, the appeal was allowed. The application seeking extension of time, which was pending, was also allowed.

10. On consideration of all the above stated factual position, the Debts Recovery Appellate Tribunal passed the order on 30.11.2006 allowing the appeal, as follows:-

> "(1) The respondent bank is hereby directed to furnish the statement of account to the appellants within 15 days from the date of receipt of copy of this order, calculating the interest at its PLR rate on Rs.34.5 lakhs, the amount awarded by the Lok Adalat from 10.12.2004 upto 30.11.2006, after giving credit to a sum of Rs.38 lakhs already deposited by the appellants with the respondent bank.
>
> (2) The appellants are directed to pay the balance amount within a month's time from the date of receipt of the statement of account from the respondent bank.
>
> (3) Failing which, the respondent bank is entitled to recover the balance amount together with interest at 12% p.a. simple from 1.12.2006 till the date of realisation."

Aggrieved against the above said order of the Debt Recovery Appellate Tribunal, the present writ petition has been filed by the petitioner bank. The main contentions raised in the writ petition and by the learned counsel for petitioner is as follows:-

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(i) that the Debt Recovery Tribunal dismissed the petition for cononation of delay on the ground of delay and laches and that the plea of respondents 1 and 2 lacked bona fides. Such finding is not rejected by the Debt Recovery Appellate Tribunal and therefore, the Appellate Tribunal ought to have dismissed the appeal,

(ii) that the third respondent Debts Recovery Appellate Tribunal has no authority or power to modify the terms of the contract between the parties,

(iii) that the Debts Recovery Appellate Tribunal ought to have dismissed the appeal filed by the respondents 1 and 2 on the ground that they had participated in the Lok Adalat and failed to show sufficient cause to condone the delay,

(iv) that as per Section 21(2) of the Legal Services Authority Act every Award made by Lok Adalat shall be final and binding on all the parties to the dispute and no appeal shall lie to any Court against the Award,

(v) that the Court cannot interpose its authority under Section 148 CPC to extend the time agreed upon between the parties to the settlement and

(vi) that the Debts Recovery Tribunal has no locus standi to extend the time or period of payment under Section 22 of the DRT Act read with Rule 18 of the DRT Rules or any other law that too without the consent of the parties.

Petitioner bank, therefore, contended that the impugned order dated 30.11.2006 passed by the Debts Recovery Appellate Tribunal should be set aside as without jurisdiction and contrary to law.

11. According to the respondents 1 and 2, the Recovery Certificate dated 18.10.2005 is an illegal order and passed without any adjudication and without notice to the respondents 1 and 2. Learned counsel for the respondents 1 and 2 referred to the affidavit dated 25.10.2005 filed in support of M.A.Nos.295 to 297 of 2005. The contention as stated by the respondents 1 and 2 is extracted hereunder:-

> "No further adjudication are found in the Case File and I am put to confusion that without an Order by the Presiding Officer, how a Recovery Certificate be issued not upon the Order of compromise but upon the actual claim made in the Main O.A. It is also

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respectfully submitted before this Hon'ble Tribunal that in the verdict of the Lok Adalat it is also mutually agreed between the parties that if the petitioner herein fails to pay the amount, then the respondent Bank can claim the entire claim amount as per the Main O.A. and not that the respondent bank can recover the O.A. covered amount whileso if at all the respondent Bank has to recover the O.A. covered amount, this Hon'ble Tribunal ought to have provided sufficient opportunity to be heard to this Applicants before issuing any Recovery Certificate since the matter was referred to Lok Adalat at the time of marking of documents by the Applicant Bank and no opportunity on merits were given to us. It is also pertinent to note that the Order copy passed by this Hon'ble Tribunal on 10.09.2004 and the issual of Recovery Certificate Order if any passed on 18.10.2005 were not communicated as contemplated in Section 19(21) of Debt Recovery Act."

12. Therefore, counsel for respondents 1 and 2 contended that there was no adjudication of the claim on merits. If at all the petitioner bank is entitled to recover, it is only the amount specified in the Lok Adalat award which is confirmed by the Debt Recovery Tribunal on the same day (i.e.) 9.10.2004. The learned counsel for the respondents 1 and 2 referred to the terms of the award stated that in the event of the amount as specified in the Lok Adalat is not satisfied, the bank is entitled to claim as per Original Application. Therefore, in default, adjudication on merits should have been done. It is also contended that the Tribunal has got the power to extend the time granted by the Lok Adalat and in the present case, the Bank has agreed to extend the time on more than one occasion in the month of January, 2005. The Debt Recovery Tribunal has dismissed the petition filed for condonation of delay by misreading the terms of the award of the Lok Adalat and without considering the prima facie case and bona fide plea for extension of time.

13. The Appellate Tribunal, however, by applying the ratio of the Supreme Court in the case of P.T.Thomas – vs. - Thomas Job (2005(4) CTC 30) held that the respondents 1 and 2 have come forward to pay the amount as per the award together with interest at the PLR rate and also deposited Rs.38 lakhs with the petitioner bank proving their bona fides, granted extension of time and allowed the appeal. Counsel for respondents 1 and 2 submitted that the order of the Debts Recovery Appellate

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Tribunal is in the facts and circumstances of the case is valid in law and the writ petition should be dismissed.

14. The appellate Tribunal relying upon the Apex Court's decision in P.T.Thomas – vs. - Thomas Job reported in 2005(4) CTC 30, held that the Tribunal in this case is empowered to extend the time granted as agreed to by the parties before the Lok Adalat. The conclusion of the appellate Tribunal is based on the factual events that happened in this case, which is found in paragraph 10 of the order impugned, and is set out herender:-

> "10. On a careful consideration of the rival submissions, it is made out that the award was passed by the Lok Adalat on 10.9.2004 granting time to the appellants till 10.12.2004 to pay the amount. The appellants did not pay the amount within the time stipulated in the award. But, however, it appears that at the request of the appellants, the respondent bank had extended the time to pay the amount upto 20.1.2005. Even by that time, the appellants were not able to pay the entire amount. But part payment of Rs.3 lakhs was paid on 8.2.2005. Thereafter, the appellants have filed the application before the DRT for extension of time to pay the amount. The appellants were under the mistaken impression that they have to file an application to condone the delay in filing the application for extension of time. But, no such application need be filed. It is suffice if an application is filed for the enlargement of time. The prayer for extension of time is akin to Section 148 in Code of Civil Procedure, which reads, "Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired." As such, it is evident that the court has got an inherent power to enlarge the time, which was fixed or granted by the Court. In this connection, it will be useful to refer the decision in the case of Smt.Periyakkal & Others (Appellants) Vs. Smt.Dakshayani (Respondent) – AIR 1983 SC 428, wherein it was held, "4. In the case

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before us, the situation is totally different. Unlike the case of Hukumchand Vs. Bansilal (AIR 1968 SC 86) where there was a statutory compulsion to confirm the sale on the dismissal of the application under O.XXI Rule 90 and, therefore, postponement and further postponement of the confirmation of the sale could only be by the consent of the parties, in the case before us, there was no statutory compulsion to dismiss the application under O.XXI Rule 90 in the absence of an agreement between the parties..... The time for deposit stipulated by the parties became the time allowed by the Court and this gave the Court the jurisdiction to extend time in appropriate cases. Of course, time would not be extended ordinarily, nor for the mere asking. It would be granted in rare cases to prevent manifest injustice." The time agreed and granted by the Lok Adalat is not under any statute. The time prescribed under any statute alone could not be extended even by consent of parties. But, when no time is prescribed under the statute, the Court has got discretion and jurisdiction to enlarge the time in appropriate cases. In the case on our hand, the time was granted by the Lok Adalat and not under any statute. As such, the Tribunal has got power to enlarge the time in appropriate cases. The compromise arrived at between the parties and the labour taken by the Lok Adalat in passing the award cannot be frustrated or neutralized merely on certain lapses on the part of the appellants, as they could not pay the amount within the given period. In fact, the bank itself granted time to pay the amount beyond the time fixed in Lok Adalat, and as such, there is nothing to fetter the hands of the Courts/Tribunal to enlarge the time, to ensure the ends of justice. Applying the ratio decidendi of P.T. Thomas (Appellant) Vs. Thomas Job (Respondent) case - 2005(4) CTC 30, I come to the conclusion that the Tribunals are empowered to extend the time granted in the Lok Adalat."

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Thereafter, the appellate Tribunal proceeded to consider the claim for extension of time accepting the plea of respondents 1 and 2 and it was allowed. In this case, the Lok Adalat passed an award on 10.9.2004 and the respondents 1 and 2 were given time upto 10.12.2004 to pay the amount as per the Lok Adalat award with P.L.R. interest. The appellate Tribunal held that the respondents 1 and 2 cannot be penalized for non-payment of the amount as determined by the Lok Adalat, which has been agreed to by the parties. While coming to this conclusion, the Appellate Tribunal was of the view that if there was default by respondents 1 and 2, the bank's right was to make the claim in the Original Application for the entire amount.

15. The learned counsel for petitioner bank relied on several decisions to state that when there is a consent between parties and a decree has been passed in terms of the compromise entered into by the parties, Court cannot extend such time. Much emphasize is placed on the decision of the Apex Court in Hukumchand - v. - Bansilal reported in A.I.R.1968 SC 86. In Smt.Periyakkal and others - v. - Smt.Dakshyani reported in A.I.R. 1983 Supreme Court 428, the Apex Court held that the Court has got power to extend time and on facts, the case in Hukumchand (1968 SC 86) (cited supra) was distinguished in Periyakkal's case. In Periyakkal and others - v. - Smt.Dakshyani reported in A.I.R. 1983 Supreme Court 428, the Apex Court held in paras 3 and 4 as follows:-

> "3. In Hukumchand - v. - Bansilal (AIR 1968 SC 86) the real question which was considered was, if a mortgaged property was sold in execution of a mortgage decree and if the application to set aside the sale under Order 21 rule 90 was dismissed but time was granted by consent of parties for depositing the decretal amount etc., could time be extended for depositing the decretal amount etc., to avert the confirmation of sale, under Order 34 Rule 5, except with the consent of the parties. The answer was 'no'. The Court said on the dismissal of an application under Order 21 Rule 90, confirmation of sale under Order 21, Rule 92 had to follow as a matter of course. Order 34 Rule 5 merely permitted the deposit to be made at any time before the confirmation of the sale and there could be no question of extending the time for such deposit. If parties agreed to have the confirmation of

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sale postponed, further postponement would be possible by agreement of parties only. The Court would have no say in the matter. Section 148 C.P.C. would have no application. The position was clarified by the Court thus (para 8):-

> "The judgment-debtor mortgagor had the right to deposit the amount at any time before confirmation of sale within 30 days after the sale or even more than 30 days after the sale under O.XXXIV, Rule 5(1) so long as the sale was not confirmed. If the amount had been deposited before the confirmation of sale, the judgment-debtors had the right to ask for an order in terms of Order XXXIV Rule 5(1) in their favour. In this case an application under O.XXI Rule 90 had been made and, therefore, the sale could not be confirmed immediately after 30 days which would be the normal course; the confirmation had to await the disposal of the application under Order XXI, Rule 90. That application was disposed of on October 7, 1958 and was dismissed. It is obvious from the order sheet of October 7, 1958 that an oral compromise was arrived at between the parties in Court on that day. By that compromise time was granted to the respondents to deposit the entire amount due to the decree-holder and the auction-purchaser by November 21, 1958. Obviously, the basis of the compromise was that the respondents withdrew their application under Order XXI, R.90 while the decree-holder society and the auction-purchaser appellant agreed that time might be given to deposit the amount upto November 21, 1958. If this agreement had not been arrived at and if the application under Order XXI, R.90 had been dismissed

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(for example, on merits) on October 7, 1958, he Court was bound under Order XXI, Rule 92(1) to confirm the sale at once. But because of the compromise between the parties by which the respondents were given time upto November 21, 1958 the Court rightly postponed the question of confirmation of sale till that date by consent of parties. But the fact remains that the application under Order XXI, R.90 had been dismissed on October 7, 1958, and thereafter, the Court was bound to confirm the sale but for the compromise between the parties giving time upto November 21, 1958."

The Court then referred to the refusal of the Court to extend time by a fortnight on November 22, 1958 and further observed (para 9):-

"The executing court refused that holding that time upto November 21, 1958, had been granted by consent and it was no longer open to it to extend that time. The executing Court has not referred to Order XXI, Rule 92 in its order, but it is obvious that the executing Court held that it could not grant time in the absence of an agreement between the parties, because Order XXI, Rule 92 required that as the application under Order XXI, Rule 90 had been dismissed the sale must be confirmed. We are of the view that in the circumstances it was not open to the executing Court to extend time without consent of parties, for time between October 7, 1958 to November 21, 1958 was granted by consent of parties. Section 148 of the Code of Civil Procedure would not apply in these circumstances and the executing

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Court was right in holding that it could not extend time. Therefore, it rightly confirmed the sale as required under Order XXI, Rule 92 there being no question of the application of Order XXXIV, Rule 5 for the money had not been deposited on November 22, 1958 before the order of confirmation was passed. In this view of the matter, we are of opinion that the order of the executing Court refusing grant of time and confirming the sale was correct".

4. In the case before us, the situation is totally different. Unlike the case of Hukumchand - v. - Bansilal, (A.I.R. 1968 SC 86) where there was a statutory compulsion to confirm the sale on the dismissal of the application under O.XXI Rule 90 and, therefore, postponement and further postponement of the confirmation of the sale could only be by the consent of the parties, in the case before us, there was no statutory compulsion to dismiss the application under O.XXI, Rule 90 in the absence of an agreement between the parties. The Court would have then decided the appeal arising out of the application on the merits. The parties, however, entered into a compromise and invited the Court to make an order in terms of the compromise, which the Court did. The time for deposit stipulated by the parties became the time allowed by the Court and this gave the Court the jurisdiction to extend time in appropriate cases. Of course, time would not be extended ordinarily, nor for the mere asking. It would be granted in rare cases to prevent manifest injustice. True, the Court would not rewrite a contract between the parties but the Court would relieve against a forfeiture clause; And, where the contract of the parties has merged in the order of the Court, the Court's freedom to act to further the ends of justice would surely not stand curtailed. Nothing said in Hukamchand's cae militates against this view. We are, therefore, of the view

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> that the High Court was in error in thinking that they had no power to extend time. Even so, Shri Jawali submitted that this was not an appropriate case for granting any extension of time. We desire to express no opinion on that question. The High Court will decide that question. We accordingly, set aside the judgment dated 15th January, 1979 of the High Court and direct the High Court to dispose of I.A.No. VII in Execution Second Appeal No.89/74 afresh in accordance with law. The parties will bear their own costs."

(emphasis supplied)

It is apparent from the above decision of the Apex Court in AIR 1983 SC 428 that time can be extended by the Court invoking the power under Section 148 C.P.C. on the facts and circumstances of the case and if there is no statutory compulsion not to extend time. There is no statutory restraint in this case. In this case, time fixed before Lok Adalat was extended by consent between parties. The Apex Court in P.T.Thomas case and Periyakkal's case (cited supra) held that time can be extended in appropriate cases by the Court and the said decision will apply to the present case. The decision of the Apex Court in Hukumchand - vs. - Bansilal (AIR 1968 SC 86), was distinguished on facts.

16. The Lok Adalath award settling the case between the petitioner bank and the respondents 1 and 2 was passed on 9.10.2004. Immediately thereafter, the Debt Recovery Tribunal passed a detailed order on the same day (i.e.) on 9.10.2004 recording the award of the Lok Adalat. In this order, it is stated that the Original Application is finally disposed off and the final order is passed strictly in terms and conditions contained in the memo of compromise and as per the award of the Lok Adalat. It is further recorded that in case of default or if deemed necessary, the Recovery Certificate be prepared and issued as per the terms of compromise and the award passed by the Lok Adalat. This order was not challenged. However, respondents 1 and 2 approached the bank for extension of time by letter dated 8.12.2004 and time was extended upto 21.1.2005. The respondents 1 and 2 however, paid a sum of Rs.3 lakhs on 8.2.2005. Thereafter, there is a stalemate and after more than 8 months at the request of the bank, the Recovery Certificate was issued for a sum of Rs.1,37,24,962/- which includes the principle, interest and cost as per the claim in Original Application. Thereafter, notice was issued by the Recovery Officer on 19.10.2005.

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17. Respondents 1 and 2 at this point of time filed M.A.Nos.295 to 297 of 2005 after almost 10 months from the last date as per the Lok Adalat Award and 8 months after making the payment of Rs.3 lakhs on 8.2.2005 as against Rs.34.5 lakhs payable. On 16.11.2005, M.A.No.311 of 2005 was filed to recall the Recovery Certificate DRC No.92/2005 issued by the Debt Recovery Tribunal. Respondents 1 and 2 filed M.A.No.191 of 2005 for early hearing which was rejected. As against the same, in the first round of appeal to the Debt Recovery Appellate Tribunal stay was granted on condition that a sum of Rs.34.5 Lakhs as per the Lok Adalat Award should be deposited by the respondents 1 and 2 herein less the amount of Rs.3 lakhs. No doubt on 19.12.2005 the said amount of Rs.31.5 Lakhs was deposited less the Rs.3 lakhs already in deposit. This is recorded by memo dated 21.12.2005. This is almost a year after the date agreed to between the parties before the Lok Adalat. In effect, the respondents 1 and 2 deposited the said amount as agreed before the Lok Adalat after lapse of one year from the date of the order of the Debt Recovery Tribunal. Since the bank did not agree for such settlement as recorded by the Debt Recovery Appellate Tribunal in its order dated 3.8.2006, the bank returned the amount. On 9.10.2006 auction sale notice was issued by the Recovery Officer of the Debt Recovery Tribunal.

18. In this background of the case on 11.10.2006, M.A.No.295 of 2005 filed for condonation of delay of 320 days in filing the petition seeking extension of time for the payment of the agreed amount covered under the Lok Adalat, was dismissed by the Debt Recovery Tribunal. The main reason given by the Debt Recovery Tribunal for rejecting the plea of the respondents 1 and 2 was that inspite of sufficient time given to them, respondents 1 and 2 failed to make the payment as agreed before the Lok Adalat and also within the time extended. The Tribunal also went into the plea with regard to condonation of delay as per the statement on affidavit and pleadings and found that the petition was filed only by the respondent No.2 on the ground of the alleged illness. The first respondent, who was also a party to the claim has not given any good reason for the delay. The Tribunal, further, held that the petition filed for extension of time was not within the period specified and agreed to by the parties before the Lok Adalat. In view of the conduct of the respondents 1 and 2, the Tribunal held that the petition for condonaton of delay of 320 days in filing the petition for extension of time was not bona fide and was intended to drag on the proceedings. The Tribunal, further, held that even if it is accepted that the Court or the Tribunal has power to extend time as per the Award of the Lok Adalat, the reasons given in the affidavit filed by the second respondent are not valid and good

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enough to condone the long delay. In para 16 of the order dated 11.10.2006 of the Debt Recovery Tribunal is as follows:-

> "16. Further, it is found, no proper explanation has been given by the first applicant to condone the long delay of 320 days in filing the petition for extension of time to pay the agreed amount. Further more, it is found that this petition, as such, is found to be without any merit. Further more, it is found that to meet the ends of justice also, the long delay of 320 days cannot be condoned, as sufficient cause is not shown to condone the delay by the applicants. The applicants have not established valid and sustainable grounds, to condone the long delay in filing this petition. The explanation offered by the applicants is not cogent and it is also found that applicants are not diligent and not disclosed sufficient cause towards exercise of discretion by this Tribunal, to condone the delay of 320 days. The applicants have not properly explained the long delay in filing this petition. The inordinate delay of 320 days, has not been properly explained by the applicants. The applicants have not shown any sufficient reason or valid ground, to show that they were prevented from filing this petition, in time."

19. The Debt Recovery Appellate Tribunal, on the contrary, recording the interim orders passed by the Appellate Tribunal and the payments made by the respondents 1 and 2 on the basis of the interim orders of the Appellate Tribunal and the deposit made by the respondents 1 and 2 after more than one year, held that the respondents 1 and 2 have complied with the order and showed their bona fides. The Appellate Tribunal held that the balance of convenience is in favour of the respondents 1 and 2 as they are ready and willing to pay the amounts as agreed to before the Lok Adalat with interest. The Appellate Tribunal rejected the plea of the petitioner bank stating that if the respondents 1 and 2 failed to pay the amount as agreed to before the Lok Adalat, the petitioner bank is at liberty to claim the entire amount as per the Original Application. Just because the respondents 1 and 2 herein have committed default in payment of amount, as per the Award of the Lok Adalat, they cannot be penalised as it is agreed to in the Lok Adalat. Therefore, the Appellate Tribunal recording the deposit of Rs.38 lakhs as per the interim order of

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the Appellate Tribunal granted the relief extending the time for payment in term of the award of the Lok Adalat. In result, the application for condonation of delay of 320 days, which was dismissed by the Debt Recovery Tribunal, was also allowed and the time was extended as sought for by the respondents 1 and 2 in the M.A.No.296 of 2005, which is pending before the Tribunal.

20. The respondents 1 and 2 have to establish a case of bona fide claim for condonation of delay and for extension of time and to what relief. In the present case, the plea of the petitioner bank to set aside the order of the Appellate Tribunal can be justified only on account of the conduct of the respondents 1 and 2 and for the following reasons.

21. The award in this case was passed on 9.10.2004 by the Lok Adalat and the time for complying with the award was fixed as December, 2004. Even assuming that the petitioner bank had extended the time, it was only upto the month of January, 2005. Thereafter, the respondents 1 and 2 on a payment of Rs.3 lakhs did not take further steps to settle the balance amount. It is only on the issuance of Recovery Certificate and the notice dated 19.10.2005 by the Recovery Officer, after nearly 10 months that respondents 1 and 2 rushed to the Debt Recovery Tribunal and filed M.A.Nos.295 to 297 of 2005. It is pertinent to point out that an order of the Debt Recovery Tribunal dated 9.10.2004 was passed immediately after the award of the Lok Adalat. Respondents 1 and 2 did not challenge the order in the manner known to law. But an application M.A.No.311 of 2005 was filed on 16.11.2005 to recall the Debt Recovery Certificate. This application is after a long period of time.

22. In this background it is apparent that respondents 1 and 2 woke up only after the bank started proceedings for recovery. The application M.A.No.295 of 2005 was filed for condonation of delay after more than 10 months, seeking extension of time. It does not appear to be a bona fide exercise on the part of the respondents 1 and 2. It is stated in the affidavit that the delay was on account of illness of second respondent. The Debt Recovery Tribunal has rejected such plea as one without basis and without bona fides and the delay is not properly explained. The respondents 1 and 2 have not challenged the order of Debt Recovery Tribunal dated 9.10.2004. Even M.A.No.311 of 2005 has been filed only for recall of the Recovery Certificate. This is because the respondents 1 and 2 are bound by the terms of the Award of the Lok Adalat and there is a bar under Section 21 (2) of the Legal Services Authority Act. In terms of Section 21 (2) of the Legal Services Authority Act, every award made by the Lok Adalat shall be final and binding on all the parties to the dispute and no appeal shall lie challenging the Award. The

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respondents 1 and 2 have not shown any just and reasonable cause for the inordinate delay and they have not filed application seeking extension of time within the time limit specified in the Award or within the date as has been mutually agreed to by parties and in any event, the delay has not been reasonably explained and the Tribunal has discussed it in detail and rejected the plea of respondents 1 and 2. The Appellate Tribunal has not differed on this view and we find no justification to take a different view with regard to the lack of bona fides on the part of respondents 1 and 2 and on delay and laches as well.

23. In this case, the application for extension of time has been filed after more than 10 months from the date of Lok Adalat Award and 8 months after the time agreed by the parties and this is to the knowledge of the respondents 1 and 2. When there is delay and laches, Courts will be loath to come to the aid of such person (see Bhoop Singh - vs. - Union of India (1992)3 SCC 136). Courts are over burdened with litigation and litigants cannot be allowed to file application at their sweet will and pleasure and plead for Courts indulgence. When a person is not vigilant of his right and acquiesces with the situation, the Courts will be very cautious in granting the relief (see U.P.Jal Nigam and another – vs. - Jaswant Singh and another (2006)11 SCC 464 and A.P. Steel Re-Rolling Mill Ltd. -vs. - State of Kerara (2007)2 SCC 725). The bank agreed for one time settlement in a sum of Rs.34.5 lakhs, eventhough the claim in Original Application is approximately Rs.62 lakhs with interest. This was agreed to by both parties to put an end to litigation. Even then, respondents 1 and 2 did not pay the amount within the agreed time, viz., December, 2004. They sought for extension of time and the bank granted it on two occasions. Even then, a sum of Rs.3 lakhs alone was deposited and thereafter, respondents 1 and 2 kept quiet. The bank to break the impasse and having no other way out, proceeded to get the recovery certificate as per the Debt Recovery Tribunal order dated 10.9.2004 and it is only thereafter that respondents 1 and 2 started filing applications on 25.10.2005 after much delay as stated above. This conduct of respondents 1 and 2 clearly establishes their gross negligence in agitating their rights. They showed no diligence in pursuing the matter. There is nothing to show their intention to pay the amount agreed within time limit specified in the Lok Adalat Award or any time thereafter till the recovery certificate was issued except the token deposit of Rs.3 lakhs. The further deposit in this case was made as a condition precedent for stay granted by the Appellate Tribunal and not when the applications were filed for condonation of delay and for extension of time. The Appellate Tribunal showed indulgence to the reluctant borrower and it is after the order of attachment that further amount was paid. Therefore, even under equity, the plea of the respondents

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1 and 2 for condonation of delay and extension of time is not justified. The decisions of the Apex Court in P.T.Thomas case also lays emphasis on the finality award of the Lok Adalat. No doubt, Court has power to extend time in appropriate case but that cannot be done in the present case in view of the delay and laches and the conduct on the part of the respondents 1 and 2 which lacks bona fides. The Apex Court in Periyakkal's case (AIR 1983 SC 428) clearly held,

> "Of course, time would not be extended ordinarily, nor for the mere asking. It would be granted in rare cases to prevent manifest injustice. True, the Court would not rewrite a contract between the parties but the Court would relieve against a forfeiture clause"

All that the Apex Court held was that the power of the Court is not curtailed. However, in the instant case, we find that the order of the Debt Recovery Appellate Tribunal granting extension of time was unwarranted and uncalled for and should have rejected it only on account of delay and laches. The Debt Recover Tribunal rightly rejected it on merits and superior Court normally do not interfere with such finding and we find no good reason to do so.

24. For the aforesaid reasons, the Writ Petition is allowed, the order of the Debt Recovery Appellate Tribunal is set aside. Consequently, connected miscellaneous petition is closed.

ts.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Registrar,
Debt Recovery Appellant Tribunal, Madras-6.

+ 1 cc to Mr. V. Raghavachari, Advocate SR No. 62872
+ 1 cc to Mr. Prasanth, Advocate SR No.62672

PUR(CO)
SR/16.10.2007

Order in
W.P.No.49011 of 2006

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